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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2010 - 432

13 **MELANIE MARIE SALING**
14 **1900 Hemlock Court**
Hollister, CA 95023
15 **Registered Nurse License No. 505574**

ACCUSATION

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about October 14, 1994, the Board of Registered Nursing issued Registered
24 Nurse License Number 505574 to Melanie Marie Saling ("Respondent"). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on July 31, 2010, unless renewed.

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2 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
3 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
4 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
5 himself or herself, any other person, or the public or to the extent that such use impairs his or her
6 ability to conduct with safety to the public the practice authorized by his or her license.

7 ...

8 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
9 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this
10 section."

11 8. Code section 4022 states:

12 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-
13 use in humans or animals, and includes the following:

14 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
prescription," "Rx only," or words of similar import.

15 (b) Any device that bears the statement: "Caution: federal law restricts this device to
16 sale by or on the order of a -----," "Rx only," or words of similar import, the blank
17 to be filled in with the designation of the practitioner licensed to use or order use of
the device.

18 (c) Any other drug or device that by federal or state law can be lawfully dispensed
only on prescription or furnished pursuant to Section 4006.

19 9. Code section 4060 states, in pertinent part:

20 No person shall possess any controlled substance, except that furnished to a person
21 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order
22 issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner
pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a
23 naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either
subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph
24 (5) of, subdivision (a) of Section 4052 . . .

25 10. Health and Safety Code section 11170 states that no person shall prescribe,
26 administer, or furnish a controlled substance for herself.

27 11. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that
28 "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to

1 procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
2 misrepresentation, or subterfuge . . ."

3 COST RECOVERY

4 12. Code section 125.3 provides, in pertinent part, that the Board may request the
5 administrative law judge to direct a licentiate found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case.

8 CONTROLLED SUBSTANCES AT ISSUE

9 13. "Hydrocodone bitartrate" is an opioid analgesic known by different brand names,
10 including Vicodin (5 mg hydrocodone/500 mg acetaminophen) and Norco (7.5 mg or 10 +mg
11 hydrocodone bitartrate/325 mg acetaminophen). These are Schedule III controlled substances as
12 designated by Health and Safety Code section 11056, subdivision (e)(4).

13 PRELIMINARY BACKGROUND FACTS

14 14. Respondent was hired as a registered nurse at the Community Hospital of Monterey
15 Peninsula ("CHOMP") in Monterey, California on January 2002. She was assigned to the
16 Emergency Department ("ER").

17 15. In March 2004, Respondent entered a drug diversion program. She returned to
18 CHOMP in January 2005 on a "diversion plan" which she successfully completed in August
19 2007. She was then returned to unrestricted duties in the ER.

20 16. On or after May 2008, it came to the attention of the ER Nursing Supervisor that
21 Respondent had been diverting Vicodin from patients for her own use. Respondent admitted to
22 diverting Vicodin and resigned her position at CHOMP.

23 17. In an interview on September 8, 2009, Respondent admitted to being addicted to
24 Vicodin, taking 20 to 30 tablets per day to sustain her habit. She affirmed that in April or May
25 2008, she began diverting Vicodin from the ER at CHOMP for her own personal use. She further
26 admitted that she was under the influence of Vicodin while providing patient care.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Diversion of Controlled Substances)**

3 18. Respondent is subject to disciplinary action under section 2761, subdivision (a), on
4 the grounds of unprofessional conduct as defined by Code section 2762, subdivision (a), in that
5 between April and May 2008, while on duty as a registered nurse in the ER at CHOMP she
6 obtained the controlled substances Vicodin and Norco by fraud, deceit, misrepresentation, or
7 subterfuge, in violation of Health and Safety Code section 11173, subdivision (a) as follows:

8 a. **Patient A:** On May 1, 2008, at 2:05 p.m., patient A, was seen in the ER for
9 right hip pain. Respondent was assigned to his care and at 3:30 p.m., she administered 4 mg of
10 Morphine Sulfate intravenously as ordered by the attending physician. Respondent subsequently
11 noted on the Emergency Department Adult Nurse Assessment Record that at 4:30 and 7:00 p.m.,
12 patient A's pain level was "0."¹ Patient A was discharged at 5:28 p.m., and was reported to have
13 left the ER at 7:00 p.m. At 6:27 p.m., Respondent removed two tablets of Vicodin for patient A
14 (after he had been discharged from the hospital). There was no reference in the nursing notes
15 that this medication was administered to Patient A.

16 b. **Patient B:** At 2:22 p.m., on April 29, 2008, patient B was seen in the ER for
17 an infection in his right leg. Respondent was assigned to his care and at 3:55 p.m., she removed
18 two tablets of Vicodin for patient B. This controlled substance was removed prior to the
19 physician's order, which was not entered until 5:02 p.m. There was no reference in Respondent's
20 nursing notes that patient B was ever administered the Vicodin.

21 c. **Patient C:** Patient C was seen in the ER at 4:20 p.m., on May 9, 2008, for a
22 seizure disorder and headache. He was discharged at 5:54 p.m., by Dr. John Hale. At 6:15 p.m.,
23 Respondent entered an alleged verbal order for patient C to receive 2 tablets of Vicodin per the
24 order of Dr. J. Karl Nicholas.² The alleged verbal order was entered 21 minutes after patient C

25 ¹ Pursuant to the CHOMP Emergency Department Adult Nurse Assessment Record "0" is
26 equivalent to a patient reporting "no pain." "1-3" is equivalent to "mild pain," "4-6" is equivalent
27 to "moderate pain," "7-9" is equivalent to "severe pain," and "10" is referenced if the patient
reports that the pain is the "worst" pain they have sustained.

28 ² CHOMP records indicate that Dr Nicholas never treated and/or examined patient C.

1 was discharged. At 6:18 p.m., Respondent withdrew 2 tablets of Vicodin for Patient C, although
2 there is no reference in the nursing notes that the medication was given.

3 d. **Patient D:** On May 12, 2008, at 3:20 p.m., patient D was seen in the ER for
4 epigastric pain. She was discharged home by attending physician Dr. File at 6:02 p.m., and
5 departed CHOMP at 6:10 p.m. After patient D left CHOMP, Respondent entered an alleged
6 verbal order on behalf of Dr. File for patient D to receive two Vicodin tablets. She withdrew this
7 medication at 6:12 p.m., approximately 10 minutes after patient D left the facility. There was no
8 documentation in Respondent's nursing notes to reflect that she had administered the Vicodin to
9 patient D.

10 e. **Patient E:** At 10:13 a.m., on May 13, 2008, patient E was seen in the ER for
11 suicide ideation. He was discharged at 11:58 a.m., and noted to have left the hospital at 12:12
12 p.m. After patient E's departure from the hospital, Respondent at 12:37 p.m., withdrew two
13 Norco tablets (10 mg hydrocodone/325 mg acetaminophen) allegedly for patient E. She entered
14 an alleged verbal order for this medication by the attending physician at 12:41 p.m., 4 minutes
15 after withdrawing this controlled substance and approximately 29 minutes after patient E left the
16 facility. There was no documentation in Respondent's nursing notes to reflect that she had
17 administered the Norco to patient E.

18 SECOND CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct – Use of Controlled Substances to 20 an Extent or in a Manner Dangerous or Injurious to Oneself or Others)

21
22 19. Respondent is subject to disciplinary action pursuant to Code section 2761,
23 subdivision (a), on the grounds of unprofessional conduct as defined by section 2762, subdivision
24 (b), by her admission that between April and May 2008, she diverted Vicodin from the ER for her
25 own personal use as set forth above in paragraph 17. Respondent further admitted, as set forth in
26 paragraph 17, that during this time period she was taking up to 30 Vicodin tablets per day while
27 working in the ER as a registered nurse -- a quantity that was dangerous and/or injurious to
28 herself as well as to the patients to whom she was assigned.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – False Entries in Hospital Records)

20. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct as defined by section 2762, subdivision (e), in that as set forth above in paragraph 18, subsections (a) through and including (e), she removed controlled substances (Vicodin and Norco) allegedly on behalf of ER patients, and failed to document in the Medication Administration Records that said medications were administered.

PRAYER

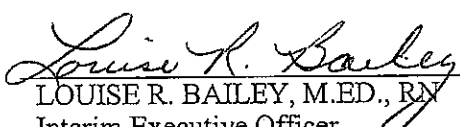
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number RN 505574, issued to Melanie Marie Saling;

2. Ordering Melanie Marie Saling to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 3/16/10


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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